IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

WP(C).No. 16622 of 2005(D)

PETITIONER:

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1. THE PRESIDENT,
   MITHIRMALA SERVICE CO-OPERATIVE BANK LIMITED NO.2452,
   MITHIRMALA P.O.

2. THE SECRETARY,
   MITHIRMALA SERVICE CO-OPERATIVE BANK LIMITED NO.2452,
   MITHIRMALA P.O.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS:

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1. STATE OF KERALA, REP. BY ITS
   PRINCIPAL SECRETARY, LABOUR DEPARTMENT,
   TRIVANDRUM.

2. SRI. N. RAMAKRISHNA PILLAI,
   LALITHA MANDIRAM, PARAPPIL,
   MUTHUVILLA P.O.

BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR (FOR R2)
SRI.PIRAPPANCODE V.S.SUDHIR
GOVERNMENT PLEADER, SRI.P.K.RAVIKRISHNAN (FOR R1)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/03/2007, ALONG WITH WP(C) NOs. 25871 OF 2006 AND 189 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1:	COPY OF THE PETITION DTD. 6/12/1985 SENT BY THE 2ND RESPONDENT TO THE PRESIDENT, MITHIRMALA SERVICE CO-OPERATIVE BANK.
EXT.P2:	COPY OF THE LETTER DTD. 11/12/1985 SENT BY THE 2ND RESPONDENT TO THE PRESIDENT OF THE SAID BANK.
EXT.P3:	COPY OF THE PETITION DTD.20/12/1985 SENT BY THE 2ND RESPONDENT TO THE PRESIDENT OF THE SAID BANK.
EXT.P4:	COPY OF THE NOTICE DTD. 4/2/1986 SENT TO THE 2ND RESPONDENT BY THE BANK.
EXT.P5:	COPY OF THE PETITION DTD. 7/2/1986 SENT BY THE 2ND RESPONDENT TO THE BANK.
EXT.P6:	COPY OF THE ORDER DTD.20/8/1986 OF THE 1ST RESPONDENT .
EXT.P7:	COPY OF THE PLAINT FILED BEFORE THE ASST. REGISTRAR AS ARC 983/87 FILED BY THE SECRETARY OF THE BANK.
EXT.P8:	COPY OF THE REPORT SENT BY THE ENQUIRY OFFICER TO THE BANK DTD.8/10/1987.
EXT.P9:	COPY OF THE LETTER DTD.5/11/87 SENT BY THE ENQUIRY OFFICER TO THE 2ND RESPONDENT.
EXT.P10:	COPY OF THE ORDER DATED 6/2/1988 OF THE JOINT REGISTRAR, CO-OPERATIVE SOCIETY.
EXT.P11:	COPY OF THE LETTER DTD. 20/2/1988 SENT TO THE 2ND RESPONDENT BY THE 1ST RESPONDENT.
EXT.P12:	COPY OF THE LETTER DTD. 20/2/1988 SUBMITTED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.
EXT.P13:	COPY OF THE PROCEEDINGS DTD.28/2/1988 OF THE SECRETARY, MITHIRMALA SERVICE CO-OPERATIVE SOCIETY.
EXT.P14:	COPY OF THE ORDER DTD. 4/7/1988 OF THE PRESIDENT, MITHIRMALA SERVICE CO-OPERATIVE SOCIETY.
EXT.P15:	COPY OF THE PROCEEDINGS DTD.13/8/1988 OF THE PRESIDENT, MITHIRMALA SERVICE CO-OPERATIVE SOCIETY.
EXT.P16:	COPY OF THE AWARD DTD. 29/1/2005 IN INDUSTRIAL DISPUTE NO.74/92 OF THE LABOUR COURT, KOLLAM.
EXT.P17:	COPY OF THE REPORT DATED 10/2/1988 ENQUIRY OFFICER SUBMITTED BEFORE THE PRESIDENT OF THE BANK.

EXT.P18: COPY OF THE AUDIT CERTIFICATE FOR 1979-80 OF THE BANK.

EXT.P19: COPY OF THE AUDIT CERTIFICATE FOR 1980-81 OF THE BANK.

EXT.P20: COPY OF THE AUDIT CERTIFICATE FOR 1981-82 OF THE BANK.

EXT.P21: COPY OF THE RELEVANT PAGES OF THE DAY BOOK VERIFIED BY THE ENQUIRY OFFICER BEFORE THE LOWER COURT FOR THE PERIOD 17/4/81 TO 12/9/82.

EXT.P22: COPY OF THE RELEVANT PAGES OF THE DAY BOOK FOR THE PERIOD FROM 1/7/1980 TO 16/4/1981.

EXT.P23: COPY OF THE RELEVANT PAGES OF THE DAY BOOK FOR THE PERIOD FROM 13/9/82 TO 31/1/1985.

EXT.P24: COPY OF THE RELEVANT PROVISIONS OF THE BYE-LAWS.

RESPONDENT'S EXHIBITS:

R2(A): COPY OF THE PETITION DATED 2.4.1991 SUBMITTED BY THE 2ND RESPONDENT BEFORE THE DISTRICT LABOUR OFFICER, THIRUVANNATHAPURM.

R2(B): COPY OF THE G.O.(RT)NO.1388/92/LBR DATED 2.6.92.

/TRUE COPY/

P.A. TO JUDGE.

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S. SIRI JAGAN, J.

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W.P(C) No. 16622 of 2005, W.P.(C) No. 25871 of 2006 & W.P.(C) No.189 of 2007

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Dated this, the 28th March, 2007.

J U D G M E N T

W.P.(C) No.16622 of 2005 is filed by the President of the Mithirmala Service Co-operative Bank Limited and its Secretary challenging Ext.P16 Award and the preliminary order annexed thereto passed by the Labour Court, Kollam in ID No.74 of 1992 whereby the Labour Court found that the enquiry conducted in disciplinary proceedings against the 2nd respondent is not valid and proper and that on the basis of further evidence adduced by the management, the Labour Court did not find the 2nd respondent guilty of the misconduct alleged against the 2nd respondent by the petitioner. However, the Labour Court instead of ordering reinstatement, directed payment of compensation of Rs.75,000/- in lieu of reinstatement with 9% interest from the date of the Award. W.P.(C) No.25871/06 is filed by the 2nd respondent in W.P.(C). No.16622/05, the workman involved in ID No.74/92 before the Labour Court, Kollam, challenging the very same Award to the extent the Award denied back wages and consequential service benefits

due to him including arrears of pension and death-cum-retirement gratuity. W.P.(C).No.189 of 2007 is filed by the very same workman challenging Ext.P9 summons issued by the Arbitrator under Section 69 of the Kerala Co-operative Societies Act directing the petitioner to appear in that arbitration case filed by the Society and to contest the case.

2. I shall first deal with W.P.(C).No.16622/05 and W.P.(C).25871/06 together since in both the petitions the very same Award is under challenge. The 2nd respondent in W.P.(C). No.16622/05 was the Secretary of the society in question. On allegations of mis-appropriation, disciplinary proceedings were initiated against the 2nd respondent workman. A domestic enquiry was stated to be conducted and he was dismissed from service on being found guilty of the misconducts alleged to have been committed by him by Ext.P14 order of the society. The 2nd respondent workman raised an industrial dispute which was referred to the Labour Court which adjudicated the matter as I.D. No.74/92.

3. The Labour Court considered the validity of the enquiry as a preliminary point and found that there was no valid

enquiry and therefore set aside the enquiry. Thereafter the management was given opportunity to adduce evidence in support of the case of management . Evidence was adduced by the management. The Labour Court did not find the evidence sufficient to find the workman guilty of the misconduct alleged against him. However, instead of directing reinstatement, the Labour Court directed the management to pay to the workmen's compensation of Rs.75,000/- in lieu of reinstatement with 9% interest from the date of the Award.

4. The petitioner challenges Ext.P16 Award on three grounds. The first is that, in view of the remedy available to the petitioner under the Kerala Co-operative Societies Act, the industrial dispute itself is not maintainable and therefore the reference of the dispute to the Labour Court is void. The second is that, the 2nd respondent being the Secretary of the Society is not a workman as defined under Section 2(s) of the industrial dispute Act and therefore the Labour Court could not have adjudicated the dispute. The third contention was that, the preliminary order as well as the Award of the Labour Court both of which are contained in Ext.P16 itself, the preliminary

order being attached as part of the Award, are against the facts and evidence in the dispute and therefore unsustainable.

5. Regarding the first issue it can be noted that the dispute was raised sometime in 1992 much before Sub Section 2(d) of the Kerala Co-operative Societies Act was introduced in the Act, by which an employee of the society could raise a dispute under Section 69 in respect of matters relating to his service. In an identical situation a Full Bench decision of this Court in **Sherly** v. **Parappuram Milk Producers Co-operative Society Ltd.**, **2007 (1) KLT 809 (F.B.)** has considered as to whether a dispute referred for adjudication to the Labour Court is valid in view of the remedies available to the workman under the Kerala Co-operative Societies Act. After considering the matter in detail in paragraph 13 the Full Bench held as follows:

> *"An employee subjected to a disciplinary action has right to have his grievance adjudicated before an independent Forum (a Forum, Tribunal, Labour Court etc.) having the trappings of a Court after he has exhausted the departmental remedies. In the instant case, the employee did not get an opportunity before the Co-operative Arbitration Court since the same had not been notified and hence the reference of the dispute by the Government before the*

> *Industrial Tribunal is certainly valid. The decision of the Deputy Director cannot stand in her way. The worker must be conceded right to raise an industrial dispute contending that her dismissal affirmed by the managing committee and the Deputy Director is bad in law. However, we may clarify the legal position that if the remedy under the statute is before a forum akin to Court, which is bound to follow judicial procedure and its decision is made final by the statute, the position would be different*."

The said decision applies on all fours to this case and therefore following the Full Bench decision I cannot but hold that the Industrial dispute raised by the 2nd respondent workman is perfectly maintainable and the contention of the management in this regard cannot be countenanced.

6. Regarding the second contention to the effect that the 2nd respondent is not a workman, I find that, that was specifically considered by the Labour Court itself in Ext.P16 Award and after quoting the decisions in **Kulwant Singh v. Reliance Petrochemicals Ltd (2000(III) LLJ 766)** and **T.C.C. Co-operative Society Limited v. Labour Court, Ernakulam (1995(III) LLJ (5))** , the Labour Court held as follows:

> *"Now in the present case the workman has given evidence as WW1 and stated that he was only implementing the directions of the President and the executive committee and that the nature of his work is only in the category of worker. Nothing has brought out to discredit his testimony in this regard. The present secretary, though examined as MW2 in the case, has also not deposed anything to make out that the worker WW1 was in a supervisory capacity or in an administrative post. So in the light of the evidence on record it has to be found that the person Sri.Ramakrishna Pillai is a worker within the meaning of Section 2(s) of the Industrial Disputes Act. "*

7. From the same it is clear that as against the evidence of the workman to the effect that he had no managerial or supervisory functions to perform in the Society, the management-Society did not adduce any evidence worth the name to controvert the evidence of the workman and therefore, I do not find any merit in the challenge against that finding of the Labour Court. Of course, the petitioner would try to rely on the Ext.P24 bye-laws of the Society, which was never produced before the Labour Court and proved before the Labour Court. That being so, I am unable to rely on Ext.P24 since the Labour Court did not have the advantage of that document

which has also not been properly proved. In the above circumstances, I do not find any merit in that contention also.

8. Coming to the last contention that the Award is unsustainable, first I have to decide the question as to whether the preliminary order is correct or not. In paragraph 6 of the preliminary order annexed to Ext. P16, the Labour Court held as follows:

> *"On the question of validity of the enquiry proceedings the main challenge of the workman is that there was no formal enquiry conducted, no specific charges framed, and charge memo issued to the workman, and that no notice of enquiry was issued to the workman. He alleges that he was not heard and no opportunity was given to him to putforth his defence. The enquiry file is produced in the case, which does not contain the enquiry report. The photo copy of the report was produced as M1. A casual perusal of M1 shows that no formal enquiry was conducted by the enquiry officer. The report states that ten questions were referred to him, which are narrated therein on which he went to the society office after issuing a notice to the delinquent and verified few records from the society and thus the report is filed. The enquiry report does not even say that formal charges were framed and such charge memo were issued to the delinquent officer. It does not also say that opportunity was given to the delinquent officer to file a written statement of defence, nor was he called upon to adduce evidence in support of his defence. On behalf of the management also no witness is examined; and it appears that*

> *the enquiry officer on his own accord perused two registers of the society and on that basis filed M1 report. The enquiry file produced also does not disclose any memo of charge and does not also disclose that such charge memo was issued to the delinquent. On the allegation of the worker that he was not issued notice of enquiry also, the management did not produced (sic produce) any supporting evidence to prove that such notice was duly served on the delinquent."*

The same speaks volumes about the illegality of the enquiry conducted. I need not add anything to that to hold that the preliminary order holding the enquiry to be invalid is perfectly valid and proper.

9. Now coming to the merits of the contentions, regarding the finding on evidence adduced by the management before the Labour Court, on perusal of the Award of the Labour Court I find that the Labour Court had considered the evidence produced by the management in detail and after discussing each and every piece of evidence, found that the same are not sufficient to hold the workman guilty of the misconduct alleged against him. I do not find any thing perverse in the finding of the Labour Court, finding of which alone would give me jurisdiction to interfere with Awards like Ext.P16. Therefore, I do not find any merit in the challenge against Ext.P16 raised by

the petitioner. That being so, the Writ Petition lacks merit and accordingly the same is dismissed.

10. Of course, in W.P.(C). No.25871/06, the petitioner contend that he is entitled to back wages and other service benefits also and therefore, the compensation of Rs.75,000/- awarded is too low and he is entitled to much more. But he does not claim reinstatement in the writ petition, probably because he has already crossed the age of retirement. Whatever that be, I do not find anything wrong with the assessment of compensation made by the Labour Court and therefore Writ Petition (Civil) No.25871/06 is also dismissed.

11. Coming to Writ Petition (Civil) No.189/2007, I find that what is challenged is only a summons issued to the petitioner by the arbitrator under Section 69, on a plaint filed by the Society. Since it is a notice I am not inclined to interfere with the same. It is up to the petitioner to appear before the Arbitrator and contest his case in accordance with law. Of course, he challenges Ext.P10 and would say that Ext.P10 has been recorded without his consent. But I do not find any challenge to Ext.P10 in the prayers in the Writ Petition. Even

assuming that the petitioner has a good case against Ext.P10, the remedy available to him is either to file a revision before Co-operative Tribunal or to challenge Ext.P10, also while challenging the Award to be passed by the Arbitrator, before the Co-operative Tribunal. Without prejudice to such rights, Writ Petition (Civil) No.189 of 2007 is also dismissed.

S. SIRI JAGAN,
JUDGE.

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